

Massachusetts Institute of Technology  
Nuclear Fuel Services, Inc.  
Pennsylvania State University  
Purdue University  
Seattle University  
Siemens Power Corporation  
University of Florida  
University of Texas  
Westinghouse Electric Corporation

Attendees are requested to notify Ms. Joan Higdon at 301-415-8082 of their planned attendance to ensure adequate meeting room space and if any special requirements are needed (e.g., for the hearing-impaired).

Dated at Rockville, Maryland, this 5th day of April, 1995.

For the Nuclear Regulatory Commission.

**Robert F. Burnett,**

*Director, Division of Fuel Cycle Safety and Safeguards.*

[FR Doc. 95-8703 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 792

#### Addition of Specific Exemptions Under the Privacy Act

**AGENCY:** National Credit Union  
Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is proposing to amend its regulations pertaining to exemptions of the NCUA's Privacy Act Systems of Records. These amendments are necessary to reflect the addition of the (j)(2) and (k)(2) exemptions of the Privacy Act to the NCUA regulations that describe exempt systems of records, and to clearly link the "Office of Inspector General (OIG) Investigative Records—NCUA," system NCUA- 20, to these Privacy Act exemptions.

**DATES:** Comments must be postmarked or posted to the NCUA Electronic Bulletin Board by May 10, 1995. Comments postmarked or posted by Electronic Bulletin Board after this date will be considered if it is practical to do so, but the NCUA is able to assure consideration only for comments that are received on or before this date.

**ADDRESSES:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, or post comments to the NCUA Electronic Bulletin Board at 800 876-1684 or 703 518-6480. Comments received may be examined at the Office of Inspector General, 5th floor, NCUA Building, 1775 Duke Street, Alexandria, VA.

**FOR FURTHER INFORMATION CONTACT:** Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 5th floor, 1775 Duke Street, Alexandria, VA, 22314, Telephone: 703-518-6352.

**SUPPLEMENTARY INFORMATION:** In 1989, in response to the Inspector General Act Amendments, P.L. 100-504, the National Credit Union Administration Board established a statutorily designated Inspector General (IG), to whom the functions of the former NCUA Office of Internal Auditor, were transferred. The functions of NCUA's Office of Inspector General (OIG) include: (1) The detection and prevention of waste, fraud, and abuse and (2) the promotion of economy and efficiency in NCUA programs and operations. As one of its principal functions, the OIG performs investigations into alleged violations of criminal law in connection with NCUA's programs and operations, pursuant to the IG Act of 1978, as amended. In conjunction with these functions, OIG reports suspected violations of criminal and civil law to the U.S. Attorney General.

Section (j)(2) of the Privacy Act (5 U.S.C. 552a (j)(2)) permits the head of an agency to promulgate rules to exempt a system of records from certain requirements if the system is maintained by an agency component or sub component whose principal function pertains to the enforcement of criminal laws and if the system of records is compiled for a criminal law enforcement purpose. Accordingly, to the extent it includes this kind of records, the OIG Investigative Records system of records is exempt from the following sections of 552a of Title 5 U.S.C.: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g), as well as from the corresponding regulatory subsections.

Section (k)(2) (Title 5 USC 552a(k)(2)) permits exemption from certain requirements if the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2); Provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished

information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source should be held in confidence. Accordingly, to the extent that it includes this kind of records, this system of records is also exempt under Section (k)(2) from the following sections of 552a of Title 5 U.S.C.: (c)(3);(d); (e)(1); (e)(4)(G), (H), and (I); and (f), as well as from the corresponding regulatory subsections. This proposed rule, amending 12 CFR 792.34, would make NCUA's regulations consistent with those of the majority of agencies with statutory IG's.

Elsewhere in today's **Federal Register** there is a Notice describing this system of records.

Exemptions from the particular subsections are justified for the following reasons:

Section 552a(c)(3) of title 5 U.S.C. requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. This accounting must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, especially in a joint investigation situation. This could seriously impede or compromise an investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication or destruction or evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

Section 552a(c)(4) of title 5 U.S.C. requires an agency to inform outside parties of amendments to and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is exempted from the amendment provisions of subsection (d) of the Privacy Act by this rule, this section is not properly applicable.

Sections 552a(d) and (f) of title 5 U.S.C. require an agency to provide access to records, make corrections, and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with the access to records of an investigation and the right to contest the contents of those records and force

changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

Section 552a(e)(1) of title 5 U.S.C. requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (e.g., the fraudulent use of Social Security numbers) and that information may not be reasonably segregated. In the interests of effective law enforcement, OIG investigators should retain this information, because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

Section 552a(e)(2) of title 5 U.S.C. requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs.

The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an

investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with evidence or information. Moreover, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term, "to the greatest extent practicable," is a subjective standard, and it is impossible adequately to define the term so that individual OIG investigators can consistently apply it to the many fact patterns encountered in OIG investigations.

Section 552a(e)(3) of title 5 U.S.C. requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purpose for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on any person, if any, of not providing all or any part of the required information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

Sections 552a(e)(4)(G) and (H) of title 5 U.S.C. require an agency to publish in the **Federal Register** notice concerning its procedures for notifying an individual at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to

contest its content. Since this system of records is being exempted from subsection (f) of the Privacy Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that the system of records would be exempt from those subsections.

Section 552a(e)(4)(I) of title 5 U.S.C. requires an agency to publish notice of categories of sources of records in the system of records. To the extent that this provision is constructed to require more detailed disclosure than the broad generic information currently published in the system notice an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and information, and to avoid the disclosure of investigative techniques and procedures.

Section 552a(e)(5) of title 5 U.S.C. requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set forth previously in item (d) (duty to maintain in agency records only "relevant and necessary information" about an individual.) While the OIG makes every effort to maintain records that are accurate, relevant, timely and complete, it is not always possible in an investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination by OIG to refer a matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until a trial (if at all) to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

Section 552a(e)(8) of title 5 U.S.C. requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is

made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal confidential investigative techniques, procedures, or evidence.

Section 552a(g) of title 5 U.S.C. provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act or any rule promulgated thereunder in such a way as to have an adverse effect on an individual. The system would be exempt from many of the Act's requirements; it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 12 CFR are procedural in nature and will aid an NCUA office to perform its criminal law enforcement function.

#### Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

#### Executive Order 12612

This amendment to NCUA's systems of record notice does not affect state regulation of credit unions.

#### List of Subjects in 12 CFR Part 792

Criminal penalties, Freedom of Information, Privacy, Reporting and record keeping requirements, Sunshine Act.

By the National Credit Union Administration Board on March 30, 1995.

**Becky Baker,**  
*Secretary of the Board.*

For the reasons set out in the preamble and under the authority of the Federal Credit Union Act of 1934, as amended; and 5 U.S.C. 552, 552a, and 553, the NCUA is proposing to adopt the following amendments to 12 CFR part 792.

### PART 792—[AMENDED]

#### Subpart B—The Privacy Act

1. The authority citation for Part 792 is revised to read as follows:

**Authority:** 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

2. In § 792.34, a new paragraph (b)(3) is added to read as follows:

#### § 792.34 Exemptions.

\* \* \* \* \*

(b) \* \* \*

(3) System NCUA-20, entitled, "Office of Inspector General (OIG) Investigative Records," consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

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BILLING CODE 7535-01-U -

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 95-ASO-10]

#### Proposed Amendment to Class E Airspace; Memphis, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Memphis, TN. A VOR RWY 16 Standard Instrument Approach Procedure (SIAP) has been developed for General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

**DATES:** Comments must be received on or before May 23, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No.

95-ASO-10, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO-530, Air Traffic Division, P.O. Box 20636,